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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 160609505-6505-01]

RIN 0648-BG07

Fisheries of the Northeastern United States; Blueline Tilefish Fishery; Secretarial Interim Action

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; interim measures; request for comments.

SUMMARY: This temporary rule implements possession limits and permit requirements for the commercial and recreational blueline tilefish fisheries in waters north of the Virginia/North Carolina border. These interim management measures are necessary to prevent a return to an unregulated fishery which could result in overfishing and to temporarily constrain fishing effort on the blueline tilefish stock while a long-term management plan is implemented. These measures are expected to constrain fishing mortality and help ensure the long-term sustainability of the stock, while potentially preventing overfishing.

DATES: Effective [*insert date of publication in the FEDERAL REGISTER*], through December 14, 2016. Comments must be received on or before [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2016-0063, by either of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking portal. Go to www.regulations.gov#!/docketDetail;D=NOAA-NMFS-2016-0063, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope “Comments on Blueline Tilefish Interim Measures.”

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Copies of the Environmental Assessment and Regulatory Impact Review (EA/RIR), Supplemental Information Report (SIR), and other supporting documents for these interim measures are available from John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA, 01930. The EA/RIR and SIR are also accessible via the internet at: www.greateratlantic.fisheries.noaa.gov/.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, (978) 281-9341.

SUPPLEMENTARY INFORMATION:

Background

Blueline tilefish (*Caulolatilus microps*) are mainly distributed in Atlantic waters off the eastern United States, and have been managed as part of the South Atlantic Fishery Management Council's Snapper Grouper Fishery Management Plan (FMP). However, South Atlantic management measures do not apply to vessels fishing for blueline tilefish north of the South Atlantic Council's jurisdiction (which extends as far north as the Virginia/North Carolina border).

In recent years, there has been increasing recreational and commercial fishing activity for blueline tilefish in the unregulated mid-Atlantic portion of the Greater Atlantic Region, north of the jurisdiction of the South Atlantic Council's Snapper Grouper FMP. From 2005-2013, commercial landings in the Greater Atlantic Region (Virginia to Maine) averaged 11,000 lb (5 mt) per year. From 2002-2011, recreational charter/party vessels in this area reported an average of 2,400 fish per year. But after the South Atlantic Council's FMP implemented significant harvest limits to protect blueline tilefish under its jurisdiction, commercial landings in the unregulated mid-Atlantic portion of the blueline tilefish range increased to over 217,000 lb (98 mt) in 2014 and recreational landings from 2012-2014 increased to 10,000-16,000 fish per year. This rapid increase in blueline tilefish harvest in the Greater Atlantic Region poses a potential long-term risk to the conservation of the species and the substantial possibility of overfishing the stock.

Based upon these concerns about the effects of the unregulated harvest of blueline tilefish, the Mid-Atlantic Fishery Management Council submitted a request on March 10, 2015, for Secretarial emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act to implement temporary management measures for blueline tilefish in the Greater Atlantic Region. On June 4, 2015, NMFS published an emergency rule

(80 FR 31864) to establish temporary management measures, including possession limits for the commercial and recreational sectors of the fishery and permitting and reporting requirements for commercial and for-hire vessels that fish for blueline tilefish north of the Virginia/North Carolina border. Then on November 30, 2015 (80 FR 74712), NMFS extended the emergency measures for an additional 186 days through June 3, 2016.

After requesting emergency action, the Mid-Atlantic Council began developing a plan for long-term management of this species. At its April 2015 meeting, the Council initiated scoping for either a new deep-water species complex FMP, with an initial focus on blueline tilefish, or an amendment to the Golden Tilefish FMP to add blueline tilefish to the management unit. After scoping hearings and review of public comments, the Council opted to initiate an amendment to the existing Golden Tilefish FMP. Following development of a range of management measures, the Council held a series of public meetings in March 2016 to solicit feedback on the measures contained in the draft amendment. On April 13, 2016, the Mid-Atlantic Council took final action to select preferred alternatives and approve the amendment for submission to NMFS for review and implementation. Due to the procedural and public participation requirements of the Magnuson-Stevens Act, the National Environmental Policy Act, and the Administrative Procedure Act, and the need to fully deliberate and develop the amendment, it was not possible for the Council to prepare its final action for submission to NMFS for approval, and for NMFS to implement it, before the emergency measures expired.

NMFS anticipates that the action will be submitted to the Secretary of Commerce for review and approval during the summer of 2016. NMFS, acting on behalf of the Secretary of Commerce, will then conduct the formal review and approval process required by the Magnuson-Stevens Act and complete the necessary notice-and-comment rulemaking to implement the

Council's recommended management measures. If approved, it is anticipated that permanent measures will be in place by the end of this year. However, the current emergency regulations have expired and the fishery would be unregulated in Federal waters until the Mid-Atlantic Council's recommended management measures can be formally reviewed and implemented. The potential for a dramatic increase in catch of blueline tilefish resulting from the fishery being unregulated could result in overfishing and pose a threat to the long-term sustainability of the resource. When the fishery was previously unregulated, substantial commercial and recreational landings were occurring in several states from New Jersey south. In the interim since emergency regulations have been put in place in Federal waters, all states from New Jersey south have implemented state measures that could constrain harvest if a lapse in Federal regulation occurs. However, there remains a substantial potential for unregulated landings to occur in states from New York north if the fishery returns to an extended unregulated state. Such landings would potentially subject the stock to overfishing and could have a long-term detrimental impact on the stock, even if the unregulated period is only a matter of months. Summer through early fall is typically the peak fishing period for blueline tilefish, so the lack of Federal regulations would occur right in this peak time.

Blueline tilefish is a data poor species throughout the Atlantic coast and particularly in the mid-Atlantic. There is not currently an overfishing limit established for this stock; therefore, it cannot yet be quantitatively determined if overfishing is occurring. In March 2016, the Mid-Atlantic Council's Scientific and Statistical Committee (SSC) reviewed all available information and for the first time set a target catch limit specifically for the mid-Atlantic fishery. For 2017, the SSC recommended an acceptable biological catch (ABC) of 87,031 lb (39.4 mt). Although this figure is not intended to apply to the 2016 fishing year, it provides a reasonable estimate of a

target catch level that, if exceeded, would be expected to cause long-term harm to the stock. In 2014, when the harvest was unregulated, the total mid-Atlantic harvest was 274,972 lb (124.7 mt), and in 2015 it was 124,113 lb (56.3 mt) (this decrease from 2014 is likely due to the fact that the emergency rule went into effect in June 2015). The harvests for 2014 and 2015 were both dramatically higher than the new ABC of 87,031 lb (39.4 mt). As noted earlier, recreational harvest of blueline tilefish in the Greater Atlantic Region has been increasing steadily since 2011, while in 2014 commercial landings suddenly increased 20-fold over previous years. We do not have sufficient information to predict exactly how the resource would adapt to such a substantial increase in harvest. However, if the Mid-Atlantic blueline tilefish fishery were to return to an unregulated condition for an extended period of time, there is the strong potential for effort to expand as it did in 2014. Comparing potential 2016 catch to the recommended catch limit for 2017 creates a mismatch of evaluation across multiple years. However, because formal catch advice is only established at this point for 2017, it is informative by illustrating that if landings in 2016 return to pre-regulation levels, those catches would grossly exceed next year's catch advice by some 200 percent. Catch levels of such magnitude would be expected to have a significant impact on the stock and cause a serious risk of overfishing. We estimate that maintaining the current Federal management measures through this interim rule could constrain catch close to the SSC's ABC recommendation until the Golden Tilefish FMP amendment approved by the Mid-Atlantic Council in April 2016 can be implemented.

Continuing the existing possession and permit requirements in this interim rule is likely to prevent the potential for overfishing, if it is occurring, while we formally review the Mid-Atlantic Council's amendment and complete notice-and-comment rulemaking to implement that action.

Interim Management Measures

Consistent with the previously issued emergency rule and extension, we are implementing the following management measures for blueline tilefish in the Greater Atlantic Region:

1. A requirement for commercial or for-hire vessels landing blueline tilefish in the Greater Atlantic Region (i.e., north of the latitude of the Virginia/North Carolina border: 36° 33' 01.0" N. latitude) to hold a valid Greater Atlantic open access golden tilefish commercial or charter/party vessel permit, which are issued by the Greater Atlantic Regional Fisheries Office;
2. A commercial possession limit of 300 lb (136 kg) whole weight per trip; and
3. A recreational possession limit of seven blueline tilefish per person, per trip.

None of these management measures modify the existing possession regulations for golden tilefish, or any other species. The requirement to hold a valid Greater Atlantic permit will ensure that catch, effort, and fishing location information for blueline tilefish will be reported moving forward. The duration of these interim measures is limited by the Magnuson-Stevens Act to an initial period of 180 days. It is likely that the Council's amendment can be implemented before an extension expires. Such measures would supersede these interim measures.

Interim Management Measures Justification

NMFS has determined that this section 305(c) interim rule, directly following a section 305(c) emergency rule, independently meets the requirements in section 305(c) of the Magnuson-Stevens Act and NMFS policy guidance for the use of emergency rules (62 FR 44421, August 21, 1997). This action meets the requirements of section 305(c)(3) for interim

rules because it is needed to prevent the potential of overfishing and deterioration of this stock while the proposed amendment to address blueline tilefish conservation is being reviewed for approval. While a definitive, qualitative overfishing limit has not been formally established for this data-poor stock, NMFS has determined that there is a potential for overfishing because, based on fishing activity for this stock in 2014, unregulated fishing in the mid-Atlantic portion of the blueline tilefish stock would likely exceed the proposed 2017 ABC by as much as 3 times or more.

This interim rule is also consistent with the Guidelines established for appropriate use of 305(c) emergency rules in 1997 (62 FR 44421, August 21, 1997). These guidelines state that emergency rules are only warranted when there are special circumstances where substantial harm to or disruption of the resource, fishery, or community would be caused in the time it would take to follow standard rulemaking procedures. The guidelines go on to state three criteria for approving a 305(c) emergency rule: (1) Results from recent, unforeseen events or recently discovered circumstances; (2) presents serious conservation or management problems in the fishery; and (3) can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process. Section 305(c) of the Magnuson-Stevens Act also provides for interim measures, which are a type of emergency rule.

There have been significant new information and developments since the implementation of the emergency rule that qualify as recently discovered circumstances not present until after the implementation of the 2015 emergency rule. When the emergency measures were first implemented, substantial discussions were beginning between the South Atlantic and Mid-

Atlantic Councils about management jurisdiction for the portion of the stock north of the North Carolina/Virginia border. Since then, those discussions have led to definitive guidance that the Mid-Atlantic Council would develop management measures for the portion of the stock within its jurisdiction. Consistent with this conclusion, the Mid-Atlantic Council's SSC developed an ABC for the portion of the stock within its jurisdiction, which, as indicated above, is significantly below potential harvest levels if the fishery remains unregulated. These actions provided a clear directive, with specific ABC's, for the Mid-Atlantic Council to develop, consistent with the statutory requirements of the Magnuson-Stevens Act, a plan or plan amendment as envisaged by section 303 of the Act.

Due to the need to resolve questions about Council jurisdiction and the timing of receiving the SSC's recommendations, it was not possible for the Council to have completed the amendment and submitted it for Secretarial approval before the current emergency expired due to procedural and public participation requirements of applicable law. Therefore, the likelihood of a gap between the expiration of the emergency rule and implementation of the amendment was unavoidable and not due to Council inaction or delay. There is no doubt that these interim measures would significantly address a serious conservation problem for the blueline tilefish stock. Absent these interim measures, portions of the mid-Atlantic range of this stock will remain unregulated which could lead to substantial increases in fishing mortality and overfishing. Finally, the immediate benefits to the blueline tilefish resource outweigh the value of advance notice and public comment, particularly because this action continues the same measures already in place under the 2015 emergency rule which received public comments after it was published.

In addition to these interim measures independently meeting the emergency rule guidelines, NMFS also finds that back-to-back 305(c) rules is justified because the fishery was, and absent another Federal action will become again, unregulated in Federal waters. This is a very different situation than a fishery already under management by a Fishery Management Council and therefore presents a more exigent need for interim management. Although the blueline tilefish has not formally been declared to be subject to overfishing due to current lack of sufficient data, the need for this interim rule is consistent with the Magnuson-Stevens Act recognition in section 304(e) that such interim rules may be necessary while a council develops an amendment to address overfishing. Moreover, the 180-day period provided by these temporary interim measures should be sufficient to put in place permanent management measures. The Mid-Atlantic Council took final action in April 2016 and is expected to complete the necessary analyses and documentation for submission to the Secretary in the coming months. In turn, NMFS will then review and conduct notice-and-comment rulemaking on the Council's recommendations this fall/early winter. Because of this, NMFS is not inclined to extend the interim measures being implemented by this rule beyond 180 days even if subsequent delays occur within the Council's documentation development or within the Agency's review and rulemaking processes.

Classification

Based on reasons and findings cited above, NMFS has determined that this section 305(c) interim rule, following a section 305(c) emergency rule, is necessary and justified given the unusual and exigent circumstances surrounding the need to prevent an unregulated fishery and the likelihood of overfishing of blueline tilefish on a short-term basis. NMFS reviewed the requirements in section 305(c) of the Magnuson-Stevens Act and NMFS policy guidance for the

use of emergency rules (62 FR 44421, August 21, 1997) and determined that this action, which is a type of emergency rule under section 305(c), is consistent with both the criteria and justifications for use of emergency measures in the Magnuson-Stevens Act.

Pursuant to section 553(b)(B) of the Administrative Procedure Act, the Assistant Administrator (AA) for Fisheries, NOAA, finds that it would be impracticable and contrary to the public interest to provide for prior notice and opportunity for public comment. The current emergency measures expired on June 3, 2016, and the blueline tilefish fishery will return to an unregulated condition in Federal waters. Due to the uncertainty surrounding the timing of when the Mid-Atlantic Council would complete and submit to NOAA amendment to the Golden Tilefish FMP, it was not possible to prepare and publish a proposed rule to continue the current measures restricting landings of blueline tilefish. Based on the landings information from fishing activity in 2014, there is the potential for unregulated catch and landings to increase rapidly if these measures are not continued. Because there is a clear need to maintain measures to constrain fishing mortality on the stock in the Greater Atlantic Region and potentially prevent overfishing, it would be potentially harmful to the long-term sustainability of the resource to further delay implementation of these measures through notice-and-comment rulemaking. Moreover, the benefit of allowing prior public comment on this rule has been addressed because NMFS has already received public comment on these very same measures after the implementation of the 2015 emergency. These comments were taken into account in implementing this interim rule. Therefore, the public interest is best served by waiving the need for additional prior public comment in order to avoid the potential for long-term harm to the blueline tilefish stock. Public comments will be accepted on this temporary rule through *[insert date 30 days after date of publication in the FEDERAL REGISTER]*, and there will be

opportunities for public participation and notice-and-comment rulemaking as we work to implement new management measures already developed and approved by the Mid-Atlantic Council.

Additionally, the Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement for a 30-day delay in effectiveness pursuant to section 553(d)(3) of the Administrative Procedure Act. For the reasons described above, delaying the effectiveness of these regulations could undermine the purpose of this temporary rule, to maintain measures to reduce catch during the 2016 fishing year as a stop-gap measure while new management measures developed by the Council are implemented to ensure the long-term sustainable harvest of blueline tilefish.

This action is being taken pursuant to the emergency provision of MSA and is exempt from OMB review.

This temporary rule is exempt from the otherwise applicable requirement of the Regulatory Flexibility Act to prepare a regulatory flexibility analysis because the rule is issued without opportunity for prior public comment.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 13, 2016

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In 648.2, add a definition for “Blueline tilefish” in alphabetical order to read as follows:

§ 648.2 Definitions.

* * * * *

Blueline tilefish means *Caulolatilus microps*.

* * * * *

3. In § 648.4, add paragraph (a)(12)(ii) to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(12) * * *

(ii) *Blueline tilefish vessels*—(A) *Commercial*. Any vessel of the United States must have been issued and have on board a valid Federal commercial tilefish permit to fish for, catch, possess, transport, land, sell, trade, or barter, any blueline tilefish in excess of the recreational possession limit as specified under § 648.298(c) from the EEZ portion of the area defined at § 648.298(a).

(B) *Party and charter vessel permits*. Any party or charter vessel must have been issued, under this part, a Federal charter/party tilefish vessel permit to fish for blueline tilefish in the EEZ portion of the area defined at § 648.298(a), if it carries passengers for hire. Any person onboard such a vessel must observe the recreational possession limit as specified at § 648.298(c) and the prohibition on sale in § 648.14(w)(1)(ii).

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4. In § 648.5, add paragraph (a)(1) and reserve paragraph (a)(2) to read as follows:

§ 648.5 Operator permits.

* * * * *

(a) * * *

(1) The operator permit provisions outlined in § 648.5(a) pertaining to operator permit requirements also apply to the operator of any vessel fishing for or possessing blueline tilefish harvested in or from the EEZ portion of the area defined at § 648.298(a).

(2) [Reserved]

5. In § 648.14, add paragraph (w) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(w) *Blueline tilefish*. It is unlawful for any person owning or operating a vessel to do any of the following:

(1) *Permit requirements*—(i) *Operator permit*. Operate a vessel with a tilefish permit to fish for or possess blueline tilefish in or from the EEZ portion of the area defined at § 648.298(a), unless the operator has been issued, and is in possession of, a valid operator permit.

(ii) *Vessel permit*. Fish for, catch, possess, transport, land, sell, trade, or barter any blueline tilefish for a commercial purpose, other than solely for transport on land, unless the vessel has been issued a tilefish permit, or unless the blueline tilefish were harvested by a vessel without a tilefish permit that fished exclusively in State waters.

(2) *Possession and landing*. (i) Fish for, possess, retain, or land blueline tilefish, unless:

(A) The blueline tilefish are being fished for or were harvested in or from the EEZ portion of the area defined at § 648.298(a) by a vessel holding a valid tilefish permit under this part, and the operator on board such vessel has been issued an operator permit that is on board the vessel.

(B) The blueline tilefish were harvested by a vessel that has not been issued a tilefish permit and that was fishing exclusively in State waters.

(C) The blueline tilefish are being fished for or were harvested in or from the EEZ portion of the area defined at § 648.298(a) in accordance with the possession limits specified at §648.298(b) or (c).

(ii) [Reserved]

(3) Fish for or possess blueline tilefish inside and outside of the EEZ portion of the area defined at § 648.298(a) on the same trip.

(4) *Transfer and purchase.* (i) Purchase, possess, or receive for a commercial purpose, other than solely for transport on land; or attempt to purchase, possess, or receive for a commercial purpose, other than solely for transport on land; blueline tilefish caught by a vessel without a tilefish permit, unless the blueline tilefish were harvested by a vessel without a tilefish permit that fished exclusively in State waters.

(ii) [Reserved]

(5) *Presumption.* For purposes of this part, the following presumption applies: All blueline tilefish retained or possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested in or from the EEZ portion of the area defined at § 648.298(a), unless the preponderance of all submitted evidence demonstrates that such tilefish were harvested by a vessel fishing exclusively in State waters.

6. Add § 648.298 to read as follows:

§ 648.298 Blueline tilefish management measures.

(a) *Management unit.* The regulations in this paragraph apply to vessels or operators of vessels fishing for blueline tilefish in the area of the Atlantic Ocean from the latitude of the VA and NC border (36° 33' 01.0" N. Lat.), extending eastward from the shore to the outer boundary of the EEZ and northward to the United States-Canada border.

(b) *Commercial possession limit.* A vessel or operator of a vessel that has been issued a valid Federal commercial tilefish permit under this part may fish for, possess, and/or land up to 300 lb (136 kg) whole weight of blueline tilefish per trip from the area defined in this section.

(c) *Recreational possession limit.* Any person fishing on a vessel who is not fishing under a commercial tilefish vessel permit issued pursuant to § 648.4(a)(12), may land up to seven blueline tilefish per trip from the area defined in this section.

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